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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 5, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

CASE NO. PUC010128

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
establishing rules governing
the discontinuance of local
exchange telecommunications
services provided by competitive
local exchange carriers

ORDER PROMULGATING RULES
GOVERNING THE DISCONTINUANCE OF LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICES
BY COMPETITIVE LOCAL EXCHANGE CARRIERS
AND REQUESTING FURTHER COMMENTS

The State Corporation Commission ("Commission") initiated a rulemaking in the above-captioned proceeding on June 20, 2001,¹ to address the potential disruption of local exchange telecommunications services to customers of competitive local exchange carriers ("CLECs").

Background

The Commission noted in the Order For Notice and Comment that the increasing financial difficulties facing CLECs have

¹ On June 20, 2001, the Commission issued an Order for Notice and Comment or Requests for Hearing ("Order For Notice and Comment"), which proposed Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers ("Discontinuance Rules"). On July 27, 2001, the Commission issued an Order Granting Extension of Time to file comments.

resulted in a number of bankruptcy filings. In fact, even more recent events in the financial markets have also forced a number of other CLECs to reevaluate their business plans, and some have pulled out of certain markets or selected states. The Commission is aware that customers in Virginia have certainly been impacted by these events as evidenced by the number of requests filed by CLECs to discontinue service in the Commonwealth.²

Notice and Comment

Pursuant to the Order For Notice and Comment, the proposed Discontinuance Rules were published in the Virginia Register of Regulations on July 16, 2001, and were made available in the office of the Commission's Clerk, as well as on the Commission's website.

² The following CLECs have been granted authority to discontinue service since June 2001: Broadslate Networks of Virginia, Inc. (PUC020016, Order issued 2/21/02); BroadStreet Communications of Virginia, LLC (PUC010258, Order issued 12/28/01, and PUC010198, Orders issued 10/19/01 and 11/21/01); Rhythms Links, Inc. - Virginia (PUC010177, Orders issued 9/5/01 and 11/9/01); OnSite Access Local, LLC (PUC010173, Order issued 12/19/01); 2nd Century Communications of Virginia, Inc. (PUC010160, Order issued 8/28/01); BroadBand Office Communications - Virginia, Inc. (PUC010147, Order issued 8/3/01); FairPoint Communications Corp. - Virginia (PUC010248, Order issued 1/10/02); and Teligent of Virginia, Inc. (PUC010245, Order issued 12/14/01). In addition, the following CLECs have been granted authority to cancel certificates since June 2001: LightSource Telecom II, LLC (PUC010259, Order issued 1/10/02); NewSouth Communications of Virginia, Inc. (PUC010250, Order issued 12/19/01); MPower Communications of Virginia, Inc. (PUC010247, Order issued 12/19/01); PICUS Communications LLC (PUC010210, Order issued 11/21/01); OpenBand of Virginia, Inc. (PUC010159, Order issued 11/7/01); Conectiv Communications of Virginia, Inc. (PUC010149, Order issued 7/31/01); Urban Media of Virginia, Inc. (PUC010137, Order issued 6/26/01); LightBonding.com VA Inc. (PUC010132, Order issued 6/26/01); and @Link Networks of Virginia, Inc. (PUC010126, Order issued 6/27/01).

Comments were filed by the Building Owners and Managers Association, International ("Building Owners and Managers"), XO Virginia, LLC ("XO"), ALLTEL Communications, Inc. ("ALLTEL"), Cox Virginia Telcom, Inc. ("Cox"), Virginia Cable Telecommunications Association ("Virginia Cable"), Cavalier Telephone LLC ("Cavalier"), AT&T Communications of Virginia, Inc. ("AT&T"), Verizon Virginia Inc. and Verizon South Inc. ("Verizon"), and Sprint Communications Company of Virginia, Inc., Central Telephone Company of Virginia, and United Telephone-Southeast Inc. ("Sprint/Central/United"). MCI WorldCom, Inc. ("WorldCom"), filed a letter in lieu of comments. No requests for hearing were received.

Most of the commenting CLECs urged the Commission to expand the application of all of the Discontinuance Rules to cover incumbent local exchange carriers ("ILECs"). However, this rulemaking was established specifically to promulgate rules and adopt procedures governing the discontinuance of local exchange telecommunications services by CLECs as required in the Rules Governing the Offering of Competitive Local Exchange Service, 20 VAC 5-400-180 ("Local Rules") at § D 7.³ The Commission declines to expand coverage of the Discontinuance Rules to the ILECs

³ Order for Notice and Comment, pp. 1-2.

beyond the duties already established for the ILECs in these Rules.⁴

Cox proposes in its comments that the application of the Discontinuance Rules should be limited to the provision of basic local exchange telecommunications services. For example, under Cox's proposal, CLECs would not be required to obtain Commission approval to discontinue data-only services. We find that all customers of a CLEC should be afforded protection from unexpected discontinuance of service; therefore, we decline to limit the application of the Discontinuance Rules to only basic local exchange telecommunications services.

Comments by ALLTEL, Cavalier, and the Building Owners and Managers support a requirement that the Discontinuance Rules require ILECs to take back customers from discontinuing CLECs. All other comments opposed such a take-back requirement. The Commission is not convinced there is a need for such a take-back requirement and declines at this time to impose such duty on the ILECs within the context of the Discontinuance Rules. To the contrary, the Commission believes that customers and LECs (both ILECs and CLECs) are better served by allowing the customers of

⁴ See proposed Rule 20 VAC 5-423-80. Duties of ILECs. Additionally, Commission approval and notice requirements for ILECs proposing to withdraw or discontinue the offering of specific tariffed services are currently handled on a case-by-case basis. A separate rulemaking proceeding would be required to establish discontinuance rules for ILECs.

a discontinuing CLEC to move their service to the LEC of their choice whenever possible.

Further Comments Requested

The Commission recognizes that the complexities of "transferring" customers' service between carriers, particularly when a large number of a discontinuing carrier's customers must choose a new carrier in a very short timeframe, presents a risk that not all customers will be able to obtain service from a new LEC before their old CLEC discontinues service. Therefore, the Commission is considering whether it should prescribe specific procedures in the Discontinuance Rules to ensure that the transfer of customers from a discontinuing CLEC to other LECs will be as seamless and expedient as possible. XO has proposed such rules in its comments (pp. 10-12),⁵ filed July 30, 2001. The Commission finds that all parties may file further comments on these rules proposed by XO or offer alternative rules for our consideration.

Furthermore, as evidenced by a recent incident in Virginia, the Commission is concerned that these Discontinuance Rules, as modified herein, do not address certain situations that may prevent a CLEC from giving adequate notice to its customers before service is actually discontinued. In particular, if a

⁵ Identified as 20 VAC 5-21-35. Requirements for Information and Service Transfer.

CLEC is utilizing network services of another carrier other than the ILEC, it is possible that the underlying carrier's discontinuance of service to the CLEC for whatever reason (i.e., nonpayment for services by the CLEC) may result in the disruption of service to the CLEC's customers. While under this scenario it would still be expected that the CLEC would be required to file for discontinuance of service under the Discontinuance Rules, it may not have adequate time to do so if the underlying carrier is not obligated to provide sufficient advance notice to the CLEC. Therefore, the Commission is requesting comments and/or proposed rules from interested parties on whether it should adopt rules that govern the responsibilities of other carriers that provide network services to CLECs. These comments should address whether such rules are necessary to serve the public interest in Virginia and under what authority the Commission can require certain carriers (i.e., those that may be providing interstate service as back haul providers) to comply with any rules we may adopt.

NOW THE COMMISSION, upon consideration of the record of this Case, the comments filed, and the applicable law, is of the opinion and finds that the Discontinuance Rules set out in Attachment A hereto should be adopted.⁶

⁶ The Discontinuance Rules will not, however, negate the provisions of any order entered prior to these Discontinuance Rules becoming effective.

While it is not necessary for us to comment on each and every rule where we have made changes, several of the rules that were significantly revised from the earlier proposed rules warrant discussion. We would note that many of these revisions were made to reflect the underlying concerns expressed by the parties in this proceeding.

Rule 10⁷

A definition of "partial discontinuance" was added to this section.

Rule 20

The information required in a formal petition to discontinue the provision of service has been expanded in subsection A 1 to include the identification of the serving arrangements utilized by the CLEC. In addition, the Commission has added and clarified in subsections C 1 through 5 the minimum information that should be included in the notice sent to customers prior to discontinuance.

Rule 30

The information required in a formal petition for partial discontinuance has been expanded in subsections A 1, 2, and 5 to include the number and unexpired terms of affected customer contracts, whether the affected service is to be discontinued or

⁷ For convenience, each Discontinuance Rule discussed will be referred to in this short form. The full citation for this Discontinuance Rule is 20 VAC 5-423-10.

made obsolete, and a description of the CLEC's notification efforts with copies of notices sent or proposed to be sent to affected customers.

In lieu of the Commission prescribing the actual notice and its form, which has been deleted in subsection B, the minimum information required for customer notice has been added in subsection C. Subsection D has been added to allow the Commission to require additional notice if it deems it necessary.

Rule 40

The requirement to file a formal petition for approval to withdraw a tariffed service offering has been deleted from subsection A. This has been replaced by a requirement for filing proposed tariff revisions for withdrawing a service with the Division of Communications.

In lieu of the Commission prescribing the actual customer notice for a request to withdraw a tariffed service, subsection C has been added to set out the minimum information required for the CLEC to include in its advance notice to affected customers.

Subsection E has been added to require Commission approval of the withdrawal of a tariffed service offering if notice is found to be inadequate or the public interest requires Commission approval.

Subsection F has been added to exclude services provided exclusively through customer contract arrangements from any authority granted in this section to withdraw a tariffed service.

Rule 50

The information required to be provided with proposed tariff revisions to obsolete a tariffed service offering has been expanded in subsection A, and the minimum information required to be given in customer notice has been included in subsection C.

In addition, there is no longer a distinction between obsoleting a tariffed service and grandfathering it to existing customers with or without restrictions as previously set forth in subsections A and B. The proposed requirement in subsection B that required a CLEC to obtain approval from the Commission prior to obsoleting a tariffed service offering with restrictions on the customers' ability to retain the service has been eliminated.

Rule 80

The requirement of an ILEC to file a formal petition for approval to disconnect a CLEC in subsections A and B has been changed to filing notification with the Commission. However, the requirement for advance notice to the Commission and to the CLEC prior to the disconnection of a CLEC has been increased

from thirty to sixty days in subsections B and C. Subsection E has been added to require any ILEC having sent notice to a CLEC of a proposed suspension or disconnection of service to also notify the Division of Communications within three (3) business days. The Commission notes that the addition of subsection E reflects the informal practice of some ILECs of alerting the Division of Communications beforehand of potential service interruptions, which should be continued.

Rule 90

Rule 90 has been added to provide for the Commission's authority to waive the application of any provision of the Discontinuance Rules.

Accordingly, IT IS ORDERED THAT:

(1) The Discontinuance Rules, as set forth in 20 VAC 5-423-10 et. seq., attached to this Order as Attachment A, are hereby adopted.

(2) A copy of this Order and the Discontinuance Rules adopted herein shall be forwarded to the Virginia Register of Regulations for publication.

(3) All parties are granted leave to file comments and/or proposed rules on the additional issues identified herein on or before April 1, 2002. All parties may then file reply comments on or before April 22, 2002.

(4) This case is hereby continued.

CHAPTER 423.

RULES GOVERNING THE DISCONTINUANCE OF LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES PROVIDED BY COMPETITIVE LOCAL
EXCHANGE CARRIERS.

20 VAC 5-423-10. Definitions.

The words and terms defined in 20 VAC 5-400-180 A shall have application to this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Bankruptcy petition" is the document that initiates a bankruptcy case under Title 11 of the United States Code (11 USC § 101 et seq.) and refers to either Chapter 7 for liquidation or Chapter 11 for reorganization of the debtor. The term includes both voluntary and involuntary bankruptcy petitions.

"Certificate" is the authority granted by the commission to a telephone utility to operate in the ~~state~~ Commonwealth] pursuant to § 56-265.4:4 of the Code of Virginia.

"Competitive local exchange carrier" or "CLEC" shall have the same meaning as "new entrant" as defined in accordance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service (20 VAC 5-400-180 A).

"Discontinuance" is a permanent cessation of telephone operations by a CLEC to its customers or the termination of individual local exchange telecommunications service offerings to its customers.

"Grandfathered customers" means the continuation of service to current customers of a service or feature that has been obsoleted.

"Incumbent local exchange carrier" or "ILEC" shall have the same meaning as "incumbent local exchange telephone company" or "incumbent" as defined in accordance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service (20 VAC 5-400-180 A).

"Obsolete a service" is the discontinuance of a service or feature to new customers.

["Partial discontinuance" is a permanent cessation or grandfathering of customers of local exchange telecommunications service or services on a geographic basis, by functional type (e.g., resale), or by class (e.g., residential) by a CLEC to its customers.]

"Resale" occurs when a CLEC purchases telecommunications services on a wholesale basis from the ILEC and resells those services to its customers.

"Unbundled network element" or "UNE" includes the various physical and functional elements of an ILEC's network offered to CLECs on an unbundled basis as a requirement of the Telecommunications Act of 1996 (47 USC § 251(c)(3)).

20 VAC 5-423-20. Requirements for discontinuance.

A. A CLEC intending to cease operations and discontinue the provision of all local exchange telecommunications services in Virginia shall file a formal petition for authority to do so with the commission. The petition shall provide:

1. The number of affected customers [~~and,~~] types of service offerings provided[, and serving arrangements utilized (e.g., UNE-P, resale, UNE, or facilities-based)];

2. A description of customer notification efforts by the CLEC and copies of any written notice or notices sent or proposed to be sent to the CLEC's [affected] customers;

3. A full explanation of the reasons for the proposed discontinuance of operations, including any plan to transfer the CLEC's customers to other carriers; [~~and~~]

4. [A request for cancellation of the CLEC's intrastate tariffs; and

5.] A request for cancellation of the petitioning CLEC's certificate or certificates to provide local exchange telecommunications services and, if applicable, interexchange telecommunications services upon the approval for discontinuance of the CLEC's local exchange operations. If cancellation of the certificate or certificates is not requested, a concise statement of why the commission should not cancel the certificate or certificates [~~should~~ shall] be given.

B. Customers shall be provided at least 30 days' [written] notice [prior to of the proposed] disconnection of service.

C. ~~[The CLEC shall provide a toll-free number that customers may call with inquiries prior to the discontinuance of local exchange service.~~ At a minimum, customer notice shall include the following information:

1. Proposed date of discontinuance of service;
2. Reason for the proposed discontinuance of service;
3. Any plan to transfer customers to another carrier or carriers;
4. The customer's network information, if applicable (e.g., circuit identification information and carrier facility assignment information); and
5. A toll-free telephone number that customers may call with inquiries prior to the discontinuance of service.]

D. The commission shall determine if sufficient notice has been provided to customers and shall prescribe any additional notice requirements it deems necessary.

20 VAC 5-423-30. Requirements for partial discontinuance.

A. A CLEC intending to partially discontinue local exchange telecommunications services ~~[on a geographic basis, by functional type (e.g., resale) or by class (e.g., residential),]~~ shall file a formal petition for authority to do so with the commission.

The petition shall provide:

1. The number of affected customers and types of service offerings provided[, including the number of any customers with term contracts and the term remaining on each];

2. [Whether the service or services are being discontinued or made obsolete;

3.] A full explanation of the reasons for partial discontinuance of service, including any plans to transfer the CLEC's affected customers to other services or carriers; [and

34]. The proposed tariff revisions with a proposed effective date[-; and

5. A description of customer notification efforts by the CLEC and copies of any written notice or notices sent or proposed to be sent to the CLEC's affected customers.]

B. Customers shall be provided at least 30 days' [written] notice of the proposed [partial] discontinuation of service. [The commission shall prescribe the actual notice and its form; however, a CLEC may include the proposed notice with its petition.]

[C. At a minimum, customer notice shall include the following information:

1. Proposed date of discontinuance of service or proposed date service will be made obsolete and the existing customers grandfathered;

2. Reason for the proposed discontinuance of service or the grandfathering of existing customers;

3. Any plan to transfer customers to another carrier or carriers, or if the service is being made obsolete and the existing customers grandfathered a description of any restrictions pertaining to those customers' ability to retain that service;

4. The customer's network information, if applicable (e.g., circuit identification information and carrier facility assignment information); and

5. A toll-free telephone number that customers may call with inquiries prior to the partial discontinuance.

D. The commission shall determine if sufficient notice has been provided to customers and shall prescribe any additional notice requirements it deems necessary.]

20 VAC 5-423-40. Requirements to withdraw a tariffed service offering.

A. A CLEC intending to withdraw a tariffed service offering currently provided to existing customers shall file [a formal petition for approval with the commission its proposed tariff revisions with the Division of Communications at least 30 days prior to the proposed effective date]. [The petition In addition, the CLEC] shall provide [with its proposed tariff revisions the following information]:

1. The number of affected customers [including the number of any customers with term contracts and the term remaining on each];

2. [A description of customer notification efforts by the CLEC and copies of any written notice or notices sent or proposed to be sent to the CLEC's affected customers; and

3.] A full explanation of the reasons the CLEC proposes to withdraw the service offering, including a description of any alternative service offerings available from the CLEC[; and

3. The proposed tariff revisions with a proposed effective date].

B. Customers shall be provided at least 30 days' [written] notice prior to the proposed effective date of the withdrawal of service. [The commission shall prescribe the actual notice and its form; however, the CLEC may file a proposed notice in its petition.]

C. [At a minimum, customer notice shall include the following information:

1. Proposed date for withdrawal of the service;
2. Reason for the proposed withdrawal of the service;
3. A description of any alternate service offerings available from the CLEC;
and
4. A toll-free telephone number that customers may call with inquiries.

D.] A CLEC intending to withdraw a tariffed service offering not currently provided to any existing customers shall ~~file its proposed tariff administratively with the Division of Communications. The CLEC shall~~ provide an attestation with [the its] proposed tariff that it has no customers currently subscribing to the service offering.

[E. The commission may require a CLEC to obtain approval to withdraw a tariffed service offering filed in accordance with this section if it determines that notice was not adequate or that approval is required to protect the public interest.

F. Authority to withdraw a tariffed service offering under this section does not apply to a service or services that are provided to any customer exclusively through a contract arrangement with the CLEC.]

20 VAC 5-423-50. Requirements to obsolete a tariffed service offering.

A. A CLEC intending to obsolete a tariffed service offering and to grandfather it to its current customers ~~[without restriction of those customers' ability to retain that service shall provide at least 30 days' written notice to the affected customers. The CLEC]~~ shall file its proposed tariff revisions with the Division of Communications at least 30 days prior to the proposed effective date ~~[and include a copy of the notice that was sent or will be sent to customers].~~ [In addition, the CLEC shall provide with its proposed tariff revisions the following information:

1. The number of affected customers, including the number of any customers with term contracts and the term remaining on each;

2. A description of customer notification efforts by the CLEC and copies of any written notice or notices sent or proposed to be sent to the CLEC's affected customers; and

3. A full explanation of the reasons the CLEC proposes to obsolete the service and grandfather the existing customers, including a description of any alternative service offerings available from the CLEC.]

[The commission may require a CLEC to obtain approval to obsolete a tariffed service offering filed in accordance with this section if it determines that notice to customers was not adequate or that approval is required to protect the public interest.]

B. [A CLEC that proposes to obsolete a tariffed service offering and to grandfather current customers in a manner that restricts those customers' ability to retain the service shall be required to obtain approval from the commission in the same manner as for withdrawal of tariffed service in 20 VAC 5-423-40 currently provided to existing customers Existing customers of the service being obsoleted shall be provided at least 30 days' written notice prior to the proposed effective date of the service being made obsolete.

C. At a minimum, customer notice shall include the following information:

1. Proposed date service will be made obsolete;
2. A description of any restrictions on the grandfathered customer's ability to retain the obsoleted service; and
3. A toll-free telephone number that customers may call with inquiries.

D. The commission may require a CLEC to obtain approval to obsolete a tariffed service offering filed in accordance with this section if it determines that notice to

customers was not adequate or that approval is required to protect the public interest].

20 VAC 5-423-60. Administrative cancellation of certificates.

A CLEC that is found to have ceased providing local exchange telecommunications services to its customers in Virginia without [providing proper notice to the commission and to its customers under complying with the requirements of] 20 VAC 5-423-20 shall be in violation of this chapter, and each of its operating certificates may be administratively cancelled.

20 VAC 5-423-70. Bankruptcy requirements.

A CLEC that is the subject of a bankruptcy petition shall provide to the commission a complete copy of the bankruptcy petition and any [reorganization] plan filed under Chapter 11 of the Bankruptcy Code. Within seven days of a bankruptcy petition being filed by or against a CLEC or its corporate parent, the CLEC shall provide written notice of such bankruptcy petition to the commission. The written notice shall include the following information and be updated as necessary:

1. Whether the CLEC currently provides service offerings to customers in Virginia and the number of its customers and types of services provided; [and]
2. The name, address, and telephone number of any trustee in bankruptcy];
and

3. A proposed plan to notify the CLEC's customers of potential discontinuation of their local exchange telecommunications services as a result of the bankruptcy petition].

20 VAC 5-423-80. Duties of ILECs.

A. An ILEC shall not, for nonpayment of charges by the CLEC to the ILEC, disconnect services provided to a CLEC that could reasonably be expected to result in disconnection of the CLEC's customers without [approval of notification to] the commission.

B. An ILEC proposing to disconnect a CLEC's resale customers shall file, if there is no pending proceeding commenced by the CLEC under this chapter, [a formal petition notification] with the commission [requesting approval] at least [30 60] days prior to the proposed date of disconnection. [The ILEC shall provide a copy of this notification to the CLEC.] The [petition notification to the commission] shall provide:

1. The number of CLEC resale customers to be disconnected and the proposed disconnection date;

2. The amount claimed to be owed to the ILEC by the CLEC[, including the identification of any disputed amounts];

3. A description of any efforts that the ILEC and the CLEC have taken to prevent disconnection or disruption of service to the CLEC's customers; [and]

4. Any proposal to notify or transfer the CLEC's resale customers to the ILEC or to other carriers[; and

5. Copies of any written disconnection notice or notices sent to the CLEC].

C. An ILEC proposing to disconnect other service offerings (e.g., UNEs) to a CLEC shall file, if there is no pending proceeding commenced by the CLEC under this chapter, [a formal petition notification] with the commission [requesting approval] at least [30 60] days prior to the proposed date of disconnection. [The ILEC shall provide a copy of this notification to the CLEC.] The [formal petition notification to the commission] shall provide:

1. [A If available, a] description and quantification of the service offerings to the CLEC to be disconnected;

2. The amount claimed to be owed by the CLEC to the ILEC[, including the identification of any disputed amounts]; [and]

3. A description of any efforts that the ILEC and the CLEC have taken to prevent disconnection or disruption of service to the CLEC's customers[; and

4. Copies of any written disconnection notice or notices sent to the CLEC].

D. The ILEC shall make every effort to assist in the expedient and timely transfer of any customer of a CLEC that is discontinuing local exchange telecommunications services to that customer's new carrier. To prevent the disruption of service to customers in such circumstances, the ILEC shall be

required to implement expedited ordering procedures for the customer's new CLEC to follow.

[E. The ILEC shall notify the Division of Communications within three business days of any notice of proposed suspension or disconnection of service sent to a CLEC.]

[20 VAC 5-423-90. Commission authority.

The commission may, in its discretion, waive or grant exceptions to any of the provisions of this chapter.]